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E.O. 12958: DECL: FIVE YEARS AFTER ICTY CLOSURE

TAGS: [BK](#) [HR](#) [KAWC](#) [NL](#) [PHUM](#) [PREL](#) [SR](#) [ICTY](#)

SUBJECT: ICTY: MILOSEVIC PROSECUTION HEADING TOWARDS
CONCLUSION

Classified By: Clifton M. Johnson, Legal Counselor, for reasons 1.5 b,
d

[11.](#) (C) Summary. The trial of Slobodan Milosevic before the International Criminal Tribunal for the former Yugoslavia (ICTY) resumed on January 13 after a three-week winter break, which had begun just after the high note of General Wesley Clark's testimony. Prosecution witnesses included a Serb journalist, a German genocide scholar, and a senior member of Croatian President Tudjman's administration. Milosevic remained in seemingly good health. Meanwhile, high profile (and risky) witnesses may be called in the few weeks remaining in the prosecution case, including former RS co-president Biljana Plavsic (see below, paras 8-9). Separately, the Appeals Chamber has upheld the Trial Chamber's decision that Milosevic will have three months from the date the prosecution closes its case-in-chief to prepare his defense, which means we can expect an opening statement by Milosevic sometime in late May or early June. End Summary.

New Year's Witnesses

[12.](#) (SBU) The first witness to follow the holiday break was Serbian journalist Nenad Zafirovic, who covered the wars in Bosnia and Croatia in the 1990s. The testimony was intended to demonstrate Milosevic's close coordination with leaders of Republika Srpska on two occasions - the 1993 Geneva peace talks, and a follow-up 1993 Republika Srpska assembly session in Pale. Regarding the Geneva negotiations, Zafirovic testified "from all the information I gathered as a journalist, the accused was the head of the Bosnian Serb delegation and everything depended on him", stating that the Bosnian Serbs referred to Milosevic informally as "the big boss" and "big daddy". Milosevic was unfazed by the testimony, arguing that he served as an advisor to the Bosnian Serbs and consistently advised them to seek a peaceful solution to the Bosnian conflict. He also noted that Presidents from the other Yugoslav republics were present in Geneva in an advisory role.

[13.](#) (C) The prosecution's main interest in Zafirovic was his authentication of a recording of a closed session of a 1993 Republika Srpska Assembly session, into which Zafirovic had smuggled a tape recorder with the help of an RS Assembly member. The recording contained an address by Milosevic to the RS assembly on May 5, 1993, and highlighted Milosevic's repeated use of the word "we" when referring to the goals of the RS. In a particularly ominous section (from the prosecution's perspective), Milosevic discusses the need for "amalgamating" Serb economies in Serbia proper and RS territories, and he then says, "I suppose it doesn't take too much imagination to realize where this process is heading." When the recording was first introduced several months ago, Milosevic argued that the statements should be taken in context because he knew the session was public. Zafirovic, however, provided evidence that the session was closed, excluded journalists and was secured by armed guards, casting the speech in a different light. Milosevic exclaimed that he used the word "We" because he was a Serb, and he was urging all Serbs to accept peace. Still, one senior prosecutor suggested that the recording of Milosevic was among the most important pieces of evidence identifying a common plan among Belgrade and Pale leadership.

[14.](#) (SBU) Ante Markovic (last Federal Prime Minister of Yugoslavia 1989-91): Markovic (who was resuming testimony from October 2003) implicated Milosevic in several key events, most notably reiterating his testimony that Milosevic and Croatian President Tudjman had agreed to partition Bosnia and Herzegovina (BiH). He also implied that Milosevic was responsible for a missile that was fired to disrupt a meeting between Tudjman and Markovic in Croatia in 1991. Milosevic denied the allegation, referencing a news article stating it was a "mock attack". In addition, Markovic testified about Yugoslav Defense Minister Kadijevic's plan to arrest Slovene and Croatian leaders in order to consolidate power. Markovic implied that Milosevic was behind the plot, which Milosevic denied. During Markovic's cross examination, Milosevic

produced his original business diaries for his last years as prime minister - documents OTP has been trying to secure for years -- indicating that Milosevic is able to retain at least some control over key archival materials that has not provided to OTP, despite specific requests.

15. (SBU) Berko Zecevic (Munitions Expert): The prosecution introduced the testimony of a munitions expert who prepared an investigative report following the bombing of the Markale marketplace on February 5, 1994. The witness, who also teaches at a Belgrade university, presented evidence that the bomb was fired from a Serbian position. In addition, Zecevic testified that a source of significant quantities of ammunition used by the Bosnian Serb Army came from Serbia in violation of the existing arms embargo. Milosevic argued that UNPROFOR had not been able to determine the bomb's origin in weeks of investigations, yet the witness was able to examine the marketplace and prepare a report in just thirty hours. He also accused Zecevic of bias, noting the Zecevic had most recently worked as a civilian for the BiH army. The witness, however, was very confident of his findings and his own expertise, and held up well under cross-examination.

16. (SBU) Ton Zwann (German Professor): The prosecution called Zwann, a German professor and specialist on genocide, to testify on an academic report he prepared that explores the definition of genocide. The witness's report defined genocide from a historical and sociological - as opposed to legal - point of view, allowing the prosecution to present a broad definition of genocide for consideration by the Chamber and assert that the preconditions for genocide in BiH existed. The report was prepared at the request of OTP, however the witness testified that it was a general analysis of genocide that was not tailored to specific events in Bosnia. Milosevic attacked the relevance of a report that failed to include a legal analysis of the basis and definition of genocide.

17. (SBU) Hrvoje Sarinic (Senior official in Croatian President Tudjman's administration): The prosecution introduced the testimony of Hrvoje Sarinic, a senior advisor in the administration of Croatian President Tudjman. Nice asked Sarinic about numerous meetings that took place during 1993 to 1995 and introduced into evidence his book, "All My Secret Negotiations with Slobodan Milosevic." Each

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individual meeting carried pieces of relevant evidence purporting to illustrate Milosevic's complicity with the Bosnian Serbs regarding key events in the wars in Croatia and Bosnia. For example, Sarinic testified that during a meeting on November 12, 1993, Milosevic said of Serbian paramilitary Arkan, "I have to have someone who is going to do part of the job for me." Asked about a December 3, 1993 meeting where Tudjman was negotiating to give Bosnian Serbs and Muslims access to a portion of the Croatian coast, Sarinic testified that Milosevic "had authorization to negotiate on behalf of Republika Srpska." Asked about a 1995 meeting with Milosevic and RS Premier Borislav Mikelic in Belgrade, Sarinic testified that Milosevic demonstrated his leadership and control over the Bosnian Serb leader, telling Mikelic to "sit down, sit here, and don't ask any questions." Sarinic also provided testimony that Tudjman and Milosevic had considered partitioning Bosnia, and that Milosevic had insisted to Tudjman that with the establishment of Republika Srpska, he had resolved "95 percent of the Serbian national question, as (Tudjman) did with Herceg-Bosna." The testimony resulted in evidence suggesting that Milosevic had played a crucial role in Serbian aggression in Croatia and Bosnia. During cross-examination, the testimony degenerated into a lengthy back and forth blame session between Milosevic and the witness on a range of events in Bosnia and Croatia. When Milosevic asked whether Sarinic truly believed that Milosevic had organized the shelling of Dubrovnik, Sarinic replied, "I don't believe that you organized it, but you knew about it."

Future Witnesses

18. (C) A senior prosecutor told Embassy legal officers on January 26 that "Mrs. P" (Biljana Plavsic) will testify for the prosecution on February 4. She will be appearing under what is now a confidential subpoena, and this particular prosecutor considers her to be "hostile." The prosecution's main interest in Plavsic, who is serving out an eleven-year sentence in Sweden following her guilty plea to one count of crimes against humanity (persecutions), relates to her evidence tending to show that Milosevic controlled Karadzic to a significant degree. She will testify, for example, that Karadzic on at least one occasion gave a speech to the RS Assembly based on notes from Milosevic's own handwriting. She will also testify, it is hoped, to payments from Belgrade to Mladic through the 1990s. Still, Plavsic is said to present a high risk -- and not only to the Milosevic prosecution. The content of her testimony against Milosevic,

for instance, remains uncertain even to the prosecution, while there is also the risk that she could contradict or repudiate details in the "agreed facts" that were integral to her plea. The chief prosecutor is said to feel very strongly that Plavsic must testify in the case.

19. (C) It also remains possible that Momcilo Perisic, formerly Milosevic's chief military adviser but with whom he had a falling out, will testify against Milosevic in early February. The fact that Perisic, who is already in The Hague, has long been considered a possible indictee by the Tribunal may also affect his testimony, as well as his credibility as a witness. A senior prosecutor has told Embassy legal officer that Perisic would present the prosecution with a high risk, as his testimony against Milosevic could be coupled with protestations of ignorance regarding crimes such as those at Srebrenica in 1995. In addition, prosecutors have serious questions as to whether his testimony could be influenced by legal proceedings against him in Serbia.

Appeals Decision on the Defense

10. (SBU) The Appeals Chamber, in a decision issued early in the week, upheld the Trial Chamber's decision that Milosevic has three months from the date of the prosecution's close of its case-in-chief to prepare his defense. However, it notes that additional adjournments are possible if the Chamber finds that the accused lacks sufficient time or resources. The decision notes that the accused must accept responsibility for his decision to defend himself by accepting that his decision has disadvantages.

Comment

11. (C) The looming conclusion of the prosecution case took on an added sense of reality during the past weeks. Most immediately, the prosecution has to make its final selections concerning witnesses, and in the case of Perisic and Plavsic in particular, it needs to weigh the potential risks against the significance they would lend to the evidence already presented over the past two years. Plavsic's testimony, for instance, could be one of the trial's critical moments. The appeals chamber decision provided a longer view of the proceedings, reminding observers that the prosecution's rest will bring to a close only the first portion of the trial. Beginning in the spring or early summer, in all likelihood, observers will finally get to see whether Milosevic puts on a serious defense against two years of evidence the prosecution has put forward to prove the charges arising out of the Kosovo, Bosnia and Croatia indictments. End comment.
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